IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

WP(C).No. 19812 of 2007(H)

OS.1100/1997 of I ADDL.M.C.,THRISSUR

.....

PETITIONER:

PAUL, AGED 68 YEARS,
S/O. CHITTILAPPILLY OUSEPH, CHALAKKAL VILLAGE,
DESOM, THRISSUR TALUK.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS:

---

1. KOCHUMARIYAM, AGED 90 YEARS,
W/O. CHITTILAPPILLY KUNNATH CHERU,
THOLOOR VILLAGE, DESOM, THRISSUR TALUK.

2. KURIYAN, AGED 60 YEARS,
W/O. CHITTILAPPILLY KUNNATH CHERU,
THOLOOR VILLAGE, DESOM, THRISSUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C)No. 19812 OF 2007 H

Dated this the 28th June, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order in I.A610/06 in O.S.1100/97. The suit is one for a permanent prohibitory injunction and also there is a counter claim filed by the defendants. As per the original of the plaint 'B' schedule is the property which, according to the plaintiff, belongs to the defendants. A perusal of the said schedule would show the extent of 'B' schedule as.....10 cents. The defendant is claiming right over the property by virtue of a document 551/61. A perusal of the document would show that the measurement of the property is 6 1/2 X 5 1/2 dhandu and extent is given as 10 cents. In order to determine the actual property it is a settled proposition that when there is a discrepancy between the measurement and extent shown in the document the boundaries may prevail. Just because the plaintiff amends the 'B' schedule by introducing the extent of the property in dhandu measurement it will not take away the right if the defendant is having more than what is stated therein. It is more so in this case because the defendant has filed a counter claim and the property which is entitled to is the property documented in 551/61.

Therefore, by allowing the amendment it will not take away the right of the defendant nor it will change the character of the suit. If the defendant wants to rebut the allegations in the amended plaint it can be done so by filing additional written statement. Therefore, the order under challenge is set aside and the application for amendment is allowed. The writ petitioner is directed to carry out the amendment within a reasonable time and the court below shall permit the other side to file additional written statement. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj